

## **CHAPTER 10 PARENTING PLANS**

This chapter is intended to assist the court in crafting parenting plans and visitation orders in domestic violence cases. Domestic violence is the on-going behavior of inappropriate control and domination by one person over another. The pattern of abuse does not stop simply because the parties stop residing together.<sup>1</sup> The batterer as a parent is more likely to be controlling and authoritarian, less consistent, and more likely to manipulate the children and undermine the mother's parenting than nonviolent fathers.<sup>2</sup> The court's order should reflect the best interests of the child and protect both the child and the abused parent from further violence

A detailed general discussion of the Parenting Act and Parenting Plans is beyond the scope of this chapter. See [RCW 26.09.181-210](#), Wechsler and Appelwick, *Parenting Plans*, Chapter 47, *Washington Family Law Deskbook* (Washington State Bar Association, 2nd ed., 2000 & Supp. 2006); D. Lye, *Washington State Parenting Act Study* (1999).<sup>3</sup> Extensive materials on issues involving child custody decisions and domestic violence are also available by contacting the National Council of Juvenile and Family Court Judges.<sup>4</sup>

In drafting parenting plan orders, the court must determine how to best protect the child and adult victim from any further violence. Even where the risk of physical harm to the child is slight, the exchange of the child between parents is an all too common opportunity for violence or harassment against the adult victim. Parenting plans that require ongoing negotiations between the parents, either because they specify joint decision-making or do not have a sufficiently detailed residential schedule, may subject not only the parents but also the child to tremendous emotional stress where there is a history of domestic violence.<sup>5</sup>

### **I. Evidentiary Issues Arising in Domestic Violence Parenting Cases**

A civil standard of review applies for determining whether domestic violence has occurred and if so what restrictions should be ordered.

[RCW 26.09.191\(5\)](#) provides that the court shall apply the civil rules of evidence, proof, and procedure in determining whether restrictions should be imposed.

The weight given to the existence of a protection order issued under [Chapter 26.50 RCW](#) as to domestic violence is within the discretion of the court. (Note that under [ER 1101\(c\)](#), the court is not required to apply the rules of evidence in a protection order hearing under [RCW 26.50](#).) Therefore, the issuance of a protection order is not necessarily *res judicata* as to whether domestic violence

has occurred or whether it rises to the level necessary to trigger a mandatory restriction under the Parenting Act.

For additional discussion of common evidentiary issues, *see* Chapter 6.

## **II. Court Ordered Investigations as to Domestic Violence and Parenting Plans**

Washington judges have the authority to see that domestic violence will be properly investigated, assessed, and presented in parenting cases to safeguard the interests of the child. Judges should be aware when considering outside evaluations that batterers are often able to perform parenting tasks well when being observed by outsiders, such as custody evaluators and in supervised visitation centers.<sup>6</sup> Judges may find helpful the National Council of Juvenile and Family Court Judges publication *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (2004, revised 2006).<sup>7</sup>

Under recent amendments to the Parenting Act, effective July 1, 2007, in cases where there are allegations of limiting factors as a result of domestic violence, physical, sexual or a pattern of emotional abuse of a child, both parties are to be screened to “determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.” [RCW 26.09.191](#). *See* Attachment 1 for Chapter 496, Laws of 2007, Section 303(4), SSB5470.

The newly adopted amendment does not specify what “screening” entails.

### **A. Advice of Professional Personnel**

[RCW 26.09.210](#) provides, “The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.”

### **B. Social Service Investigation and Report**

#### **1. [RCW 26.09.220\(1\)](#) provides:**

The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to [RCW 26.12.175](#), or both. The investigation and report may be made by the guardian ad litem, the staff of the

juvenile court, or other professional social service organization, experienced in counseling children and families.

2. [RCW 26.09.220\(2\)](#) continues, in part:

In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent.

C. **Guardian Ad Litem or Attorney for Child**

To insure presentation of domestic violence issues from the child's perspective, the court may wish to appoint a guardian ad litem. If the child is an adolescent, the court may prefer to appoint an attorney for the child. Although a guardian ad litem is not a traditional expert, the court may admit the opinion of the guardian as to what arrangements would be best for the child. *Fernando v. Nieswandt*, 87 Wn. App. 103, 107, 940 P.2d 1380, *review denied*, 133 Wn.2d 1014, 946 P.2d 402 (1997). The court, however, is not bound by such opinion and may ignore the guardian's opinion if "if they are not supported by other evidence" or it finds other testimony more convincing. *Id.* at 87 Wn. App. 107.

Guardians ad litem under Title 13 or 26 RCW are required to have additional training concerning domestic violence once the revised statewide curriculum is available. The curriculum is required to be made available by July 1, 2008. See Section 302 (15) and Section 305(1), SSB5470, for amendments to [RCW 2.56.030\(15\)](#) and [RCW 26.12.177](#).

### III. Overview of the Parenting Act

A. **Purpose and Objectives of the Parenting Plan**

1. **Purpose**

The legislative policy statement in [RCW 26.09.002](#) (the Washington State Parenting Act of 1987) provides that "[t]he best interests of the child are served by a parenting arrangement that

best maintains a child’s emotional growth, health and stability, and physical care.” In 2007, the legislature clarified its policy statement by amending [RCW 26.09.002](#) to state that “Residential time and financial support are equally important components of parenting arrangements.” *See* Section 101, SSB5470.

In addition to setting forth specific criteria to guide courts in determining children’s best interests, the Parenting Act replaced the use of child custody and visitation orders with “Parenting Plans.” Parenting plans must contain: 1) findings made by the court as to whether any factors exist that would require mandatory or discretionary restrictions, such as a history of domestic violence; 2) a detailed residential schedule for the children of the parties; 3) a delineation as to each parent’s right to make decisions concerning the children, i.e., sole or joint decision-making; and 4) whether, in the event of future childrearing disputes, a parent is entitled to immediately proceed with court action or must first attempt alternative dispute resolution, such as mediation.

In 2000, the Legislature also amended the Act to require that Parenting Plans contain specific information about parents’ rights and responsibilities in the event one parent wishes to relocate the child’s residence. [RCW 26.09.490](#).

In 2007, the legislature amended [RCW 26.09](#) to add a new section to “better implement the existing legislative intent” by increased focus on additional alternative dispute resolution options and by increased focus on domestic violence. The new section states: “Furthermore, the legislature finds that the identification of domestic violence as defined in [RCW 26.50.010](#) and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children.” *See* Section 102, SSB 5470.

## **2. Objectives**

The objectives of the parenting plan are outlined in [RCW 26.09.184\(1\)](#) as follows:

- (a) Provide for the child’s physical care;
- (b) Maintain the child’s emotional stability;
- (c) Provide for the child’s changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in [RCW 26.09.187](#) and [26.09.191](#);
- (e) Minimize the child’s exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under [RCW 26.09.187](#) and [26.09.191](#), to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with [RCW 26.09.002](#).

While the Parenting Act in most cases favors both parents to continue their involvement in their children’s lives, both in terms of the time spent with each parent and parents’ rights to make decisions for their children, there are significant limitations when the court makes a finding of a mandatory restriction, such as domestic violence, as defined under [RCW 26.09.191](#).

### **3. Scope of the Parenting Act – application to orders involving children**

The definitions and standards, including domestic violence limitations, imposed by the Parenting Act for determining a residential schedule apply to most types of civil orders involving contact with a child. These include orders entered as part of a dissolution of marriage, third-party custody action, domestic violence protection order, or parentage action. [RCW 26.09.191](#); [RCW 26.10.160](#); [RCW 26.50.060\(d\)](#); [RCW 26.26.130\(7\)](#). The definitions and standards of the Parenting Act are not explicitly made applicable to adoptions or juvenile court cases, such as dependency actions. See *In re Interest of J*, 99 Wn. App. 473, 481, 994 P.2d 279 (2000) (in adoption cases, no ironclad rule against placing child in home with history of domestic violence).

## **B. Domestic Violence and the Parenting Act**

### **1. Domestic violence is an important criterion in establishing a temporary or final parenting plan.**

While the Parenting Act generally requires parenting plans to be entered on the basis of the child’s best interests and presumes that continued parental involvement is in the child’s interest, a finding of domestic violence is a significant factor that the court must

consider when entering a parenting plan. Although the general considerations in entering a parenting plan are set forth in [RCW 26.09.184](#) and [RCW 26.09.187](#), certain types of conduct on a parent's part will trigger either mandatory or discretionary restrictions on the use of joint decision-making, alternative dispute resolution, and contact between the parent and child.

Domestic violence, as defined by [RCW 26.09.191](#) is one of the factors that will trigger a "mandatory restriction." Even if the domestic violence between the parents does not rise to the level sufficient to trigger a mandatory restriction, it may still be a factor that the court may appropriately consider in crafting a parenting plan.

## 2. **"Domestic violence" – mandatory restrictions**

Not all forms or levels of domestic violence will trigger application of the "mandatory restrictions" of the Parenting Act. The court must first find the existence of **either** a "history of acts of domestic violence as defined in [RCW 26.50.010\(1\)](#)" **or** an "assault or sexual assault which causes grievous bodily harm or the fear of such harm." [RCW 26.09.191](#). (*Emphasis added.*)

Thus, it is possible that no mandatory restrictions will be required even if a parent has been convicted of an assault or a protection order has been entered because the domestic violence was not sufficiently dangerous or threatening and also was not part of a history or pattern. Where the court does not make a finding of "domestic violence" sufficient to trigger mandatory application of restrictions, it still may look to other factors under the Parenting Act to fashion an appropriate parenting plan. For example, "the abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development" may justify restrictions under [RCW 26.09.191\(3\)\(e\)](#).<sup>8</sup>

## **IV. Entering Parenting Plans Where Finding of Domestic Violence Made**

### **A. Washington Prohibits Joint Decision-Making and May Limit Mandatory Alternative Dispute Resolution in Domestic Violence Cases.**

Where a finding of “domestic violence” as defined under [RCW 26.09.191](#) is made, joint decision-making shall not be ordered. The court also may not order alternative dispute resolution, such as mediation. However pursuant to 2007 legislation, a section has been added to [RCW 26.09](#) which allows the court to permit mediation where (1) a victim requests mediation, and (2) the court makes a finding that mediation is appropriate under the circumstances, and (3) the victim is allowed to have a supporting person present during the mediation. *See* Section 301, SSB 5470, and [RCW 26.09.191\(1\)](#); *In re Marriage of Caven*, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998), *aff’g In re Marriage of C.M.C.*, 87 Wn. App. 84, 940 P.2d 669 (1997).

[RCW 26.09.191\(1\)](#) requires sole decision-making upon a finding of either a history of acts of domestic violence or an assault causing grievous bodily harm or the fear of such harm.

Agreement of the parties does not defeat the mandatory prohibition on joint decision-making where “domestic violence” is found. [RCW 26.09.187\(2\)\(a\)](#) provides that the court shall approve agreements of the parties allocating decision-making authority, or specifying rules regarding the children’s education, health care, and religious upbringing, only when the court finds that:

- (i) The agreement is consistent with any limitations on a parent’s decision-making authority mandated by [RCW 26.09.191](#); and
- (ii) The agreement is knowing and voluntary.

### **B. Restrictions on Residential Schedule for Child Required Where Requisite Finding of Domestic Violence Made**

#### **1. Finding of domestic violence creates a “mandatory restriction.”**

[RCW 26.09.187\(3\)\(a\)](#) provides:

[T]he court shall make residential provisions for each child which encourage each parent to maintain

a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with [RCW 26.09.191](#).

The parent's residential time with the child shall be limited if the requisite finding of "domestic violence" as defined under [RCW 26.09.191](#) is made. The court may not, for example, order a residential schedule that requires a child to frequently alternate his or her residence between the households of the parents for "brief and substantially equal intervals of time" if a limitation, such as domestic violence, exists. [RCW 26.09.187\(3\)\(b\)\(i\)](#). [RCW 26.09.191\(m\)\(i\)](#) has been amended to allow the court to also consider the safety of the parent who may be at risk of physical, sexual or emotional abuse or harm that could result if the parent has contact with the parenting requesting residential time with the child. The court may require supervised contact, the completion of relevant counseling or treatment, and impose other limitations. *See* Section 303, SSB 5470.

In most cases, the statute does not mandate what types of restrictions on contact with the child will be required but leaves such determinations to the discretion of the court. A new section has been added to [RCW 26.09](#) which lists services that the court may order in cases involving domestic violence or child abuse if residential time has been ordered. *See* Section 401 SSB 5470, which will be discussed more fully below

The restrictions or limitations that a court could include in a parenting plan are: (1) ordering contact with the child to be supervised; (2) requiring as a condition of contact that the parent complete batterers' treatment; (3) requiring the visitation exchanges be at a public place; or (4) limiting the amount of time with the child. The court must fashion its residential schedule in a manner, however, reasonably calculated to protect the child, as well as the parent, from physical, sexual, or emotional abuse or harm that could result from contact with the other parent.

If the court orders contact to be supervised, the court may not approve of a supervisor unless that supervisor accepts that the harmful conduct occurred and is willing and capable of protecting the child from harm. [RCW 26.09.191\(2\)\(m\)\(iii\)](#). Under the newly adopted Section 401, the supervisor is also to be a neutral and independent adult with an adequate plan for supervision of such residential time. The court may revoke approval of the supervisor

if the court determines after a hearing that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. This section also, however, allows the court to permit a family or household member to act as a supervisor, so long as the court established the conditions to be followed during the residential time.

Section 401 also allows the court to order exchanges of the child to take place in a protected setting, supervised visitation as described above, and/or the use of safe exchange centers or alternative safe location to facilitate the exercise of residential time.

**2. The court must restrain the abuser from all contact with the child if the residential limitations are not adequate to protect the child.**

[RCW 26.09.191\(2\)\(m\)\(i\)](#) provides:

The limitations imposed by the court under [[RCW 26.09.191\(2\)\(a\) or \(b\)](#)] shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from harm or abuse that could result if the child has contact with the parent requesting residential time, **the court shall restrain the parent requesting residential time from all contact with the child.** (*Emphasis added.*)

The recent legislative changes to [RCW 26.09.191\(2\)\(m\)\(i\)](#) also require the court to consider the safety of the abused parent. It does not expressly state that the court may limit all contact, but does appear to give the court the discretion. It states: “The limitations the court may impose include, **but are not limited to:** supervised contact between the child and the parent or completion of relevant counseling or treatment.” *See* Section 303(m)(i), SSB 5470.

**3. The requirement of mandatory restrictions on residential time in domestic violence cases is rebuttable.**

Once a finding of domestic violence has been made, **only if** the court expressly finds that contact between the abusive parent and the child will not cause physical, sexual, or emotional abuse or harm to the child **and** that the probability that the parent’s harmful or abusive conduct will recur is so remote that it would not be in the child’s best interests to apply these limitations **or** if the court expressly finds that the parent’s conduct did not have an impact on the child, is the court freed from placing mandatory restrictions on a parent’s contact with a child. [RCW 26.09.191\(2\)\(n\)](#). “Impact” is defined broadly—not just the danger of physical abuse but the emotional abuse or harm that may result to the child. (*Emphasis added.*)

**C. Court Has Discretion to Order Sole Decision-Making, Prohibit Alternative Dispute Resolution, or Enter Restrictions Concerning Residential Schedule Where Domestic Violence Does Not Rise to Level Required by [RCW 26.09.191](#).**

[RCW 26.09.184\(1\)\(b\) and \(e\)](#) specifically provides that the purpose of the parenting plan is to “maintain the child’s emotional stability” and to “minimize the child’s exposure to harmful parental conflict.” The court generally had the discretion to craft a parenting plan consistent with the child’s best interests.

Moreover, other factors may trigger mandatory or discretionary restrictions even where the domestic violence does not rise to the level of frequency or seriousness required by [RCW 26.09.191](#). For example, “[t]he abusive use of conflict by the parent which creates the danger of serious damage to the child’s psychological development” is specifically listed as a discretionary limitation. [RCW 26.09.191\(3\)\(e\)](#). Where the domestic violence has resulted in a “pattern of emotional abuse of a child,” restrictions on joint decision-making, and the residential schedule are mandatory. [RCW 26.09.191\(1\)\(b\)](#). As noted above, at the victim’s request the court may allow mediation, under the new section added to [RCW 26.09](#) by the 2007 legislation. *See* Section 301, SSB5470.

Lack of a demonstrated ability to cooperate and to jointly parent may militate against requiring the parents to make joint decisions, use alternative dispute resolution or to “frequently alternate . . . for brief and substantially equal intervals of time” the residence of the child between the parents’ households. [RCW 26.09.187\(1\)\(a\); \(2\)\(c\); and \(3\)\(b\)](#). *See In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 899 P.2d 803 (1995) (court has ability to weigh stability of parents and vulnerability of child in

evaluating whether to order joint decision-making; must give weight to parents' right to expose children to their religious beliefs).

Requiring parents to negotiate delicate issues of childrearing, particularly immediately after a separation, may be very stressful for both the parents, and, indirectly the children. The Parenting Act's policy of not requiring joint decision-making or residential schedules that require a high degree of cooperation where the parents have a history of conflict appears to be borne out by recent research. "Most parents do not adhere to the joint decision-making provisions in their plans and most professionals believe these provisions promote conflict . . . Current restrictions limiting shared parenting arrangements to low conflict, high cooperation families are appropriate and should be adhered to."<sup>9</sup>

## V. Supervised Visitation

Supervised visitation, which can ensure the safety of victims of spousal abuse and their children, has been recommended by the National Council of Juvenile and Family Court Judges in the *Model Code on Domestic and Family Violence*.<sup>10</sup> The court should exercise caution in using family members and friends, since those parties can unwittingly participate and maintain the inappropriate systemic violence in the family. The court should also be aware that supervised visitation programs for dependency cases must provide additional safeguards for children and the parent who has experienced abuse in domestic violence cases.<sup>11</sup> While the assumption has been that the level of violence will be reduced or eliminated if supervised visitation is ordered in domestic violence cases, practitioners report that batterers exhibit similar behavioral patterns while utilizing supervised visitation services.<sup>12</sup> Behaviors include: denial of abuse, blaming partner, control/manipulation, making threats, and physical violence. Judges should collaborate with supervised visitation programs, such as those listed below, to ensure safety concerns are addressed.

- Safe Havens: Supervised Visitation and Safe Exchange Grant Program, Kent, Washington.<sup>13</sup>
- Professional supervisors, paid by the visiting parent. (*See* Supervised Visitation Network of Washington, [www.svnetwork.net/wa](http://www.svnetwork.net/wa)).
- Trained staff of a community agency, such as Catholic Community Services.

## **VI. Drafting Considerations for Parenting Plan Orders**

### **A. Need for Specificity**

Parenting Plans in domestic violence cases are most effective when they contain very specific language regarding conditions of the order and when they specify how future disputes between the parties will be resolved.

Law enforcement officers report that they have difficulty enforcing orders with ambiguous or general conditions. Specific language allows the court to provide effectively for the safety of the abused party, as well as for ease of enforcement of the order by law enforcement.

Specific language also prevents either party from taking advantage of any loopholes or ambiguities (e.g., “reasonable visitation”) resulting from general words or phrases.

### **B. Examples of Specifically Worded Conditions**

The Parenting Plan should contain a specifically worded residential schedule, for example:

1. Visitation shall take place every first and third Saturday from 10 a.m. to 3 p.m., at the home of and in the presence of Mary Smith, plaintiff’s aunt, at 123 Main St., City. The mother is responsible for dropping off the child by 9:45 a.m. and picking up the child at 3:15 p.m. In the event that visitation cannot take place, the notifying party must telephone Mary Smith at (800) 123-4567 by 8:30 a.m., and visitation shall then take place the following Saturday with the same provisions.
2. If father wishes to exercise visitation rights, he must call Mary Smith at (800) 123-4567 by 10 a.m. the day before. Mary Smith shall then call the mother.
3. Father shall consume no alcohol or illegal drugs during the 12 hours prior to and during visitation. If he appears to have violated this provision, Mary Smith is authorized to deny him visitation that week.
4. Visitation is conditioned upon father attending the perpetrator treatment program at (insert name) organization, for a certain period of time, (e.g., every week for one year).
5. Visitation may be denied if the father is more than 30 minutes late and does not call by 8 a.m. to alert mother to the delay(to prevent

custodial parent and child spending all day waiting for the other parent, who never comes).

6. If there is a third party available for pick-up and drop-off or supervised visitation, petitioner must arrive at the drop-off location 20 minutes before respondent and then leave before respondent arrives. At the end of visitation, respondent must remain at the location for 20 minutes while petitioner leaves with the children. (This prevents respondent following petitioner to harass her or ascertain the location of petitioner's new residence.)
7. If there is no third party available for exchange of the children, some plans have called for drop-off of the children at a local police station. Each parent leaves the children in police custody for a brief period (such as 20 minutes) to avoid contact between parents. This provision should be used only as a last resort since the police may not be properly equipped to supervise the children for the interim period. Most importantly, it may give the children a sense that they have done something wrong to require them to wait at a police station. If your jurisdiction does not have a visitation exchange service, consider using a public place such as a fast food restaurant with hours that fit the exchange schedule.

## **VII. Interstate Custody, Parental Kidnapping, and International Child Abduction**

A national study of state and federal laws reported that parental kidnapping occurs at an estimated rate of 203,900 cases per year.<sup>14</sup> When parents take their children in domestic violence cases, the abductions generally occur in one of two contexts: batterers take the children in order to harm victims further; or victims flee with their children in an effort to protect themselves and their children from the batterers' violence. One action is vindictive while the other is protective.<sup>15</sup>

Some batterers use the courts to extend their harassment through lengthy custody fights, threats of abduction, and actual abductions of their children across international borders. Some options are available for the battered mother who is left in the United States but there is little or no assistance for the abducting mother who takes her children across international borders.<sup>16</sup>

In many states, protection of oneself or one's children is grounds for custodial interference. However, the National Council of Juvenile and Family Court Judges recommends that an instance of flight to avoid abuse should not be considered grounds for modification of custody. Particularly when the spouse who has failed to comply with the court's custody or visitation order is not available to explain,

judges should be very reluctant to alter custody orders in favor of the spouse who may be or is a known batterer.<sup>17</sup>

## **A. Federal and State Regulations**

### **1. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<sup>18</sup> and [Chapter 26.27 RCW](#)**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was adopted in Washington State in 2001. It repeals the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA clarifies some aspects of the UCCJA, provides additional remedies for enforcement of custody decrees, and makes changes that reflect concern for victims of domestic violence. As of July 2006, 43 states, the Virgin Islands, and the District of Columbia had adopted the UCCJEA. Highlights of the UCCJEA include:

- (1) Applies to most child custody proceedings (Sections 102, 103, and 104) including domestic violence protection orders, dependency, guardianship, termination of parental rights, dissolution of marriage, legal separation, paternity and third party custody orders. Excluded are juvenile delinquency, emancipation, adoption, and emergency medical care proceedings as well as any custody proceeding pertaining to an Indian child to the extent it is governed by the Indian Child Welfare Act.
- (2) State courts must treat tribes as if they were states and recognize and enforce tribal custody determinations entered in substantial conformity with the UCCJEA jurisdictional standards. [RCW 26.27.041](#). (Section 104.)
- (3) State courts must treat foreign countries as if they were states and recognize and enforce other countries' custody determinations entered in substantial conformity with the UCCJEA jurisdictional standards, unless the foreign country's child custody laws violate fundamental principles of human rights. [RCW 26.27.051](#). (Section 105.)
- (4) A party to a custody proceeding is not subject to personal jurisdiction in this state for another purpose solely because of participation or presence in the state for the custody proceeding. [RCW 26.27.091\(1\)](#). (Section 109.)

- (5) A court may allow parties to participate in the court's communication with the court of another state. [RCW 26.27.101 \(2\)](#). (Section 110.)
  - (a) If the communication concerns scheduling, court records, and similar matters, the court need not inform the parties or make a record of the communication. [RCW 26.27.101\(3\)](#).
  - (b) Otherwise, if the parties are not permitted to participate, they must be given the opportunity to present facts and legal arguments before the court makes a decision on jurisdiction. [RCW 26.27.101\(2\)](#)
- (6) A court may order, on its own motion, that testimony be taken in another state. Documentary evidence transmitted from another state by technological means may not be excluded from evidence on objection based on the means of transmission. [RCW 26.27.111](#). (Section 111.)
- (7) A court may request the court of another state to hold an evidentiary hearing; order a person to produce or give evidence; order an evaluation; or forward a certified copy of a transcript, evidence, or evaluation. [RCW 26.27.121](#). (Section 112.)
- (8) The court must preserve the record including pleadings, orders, decrees, records of hearing, and evaluations until the child is 18 years old. [RCW 26.27.121\(4\)](#). (Section 112.)
- (9) Home state as the basis for jurisdiction has priority over all other bases for jurisdiction. [RCW 26.27.201](#). (Section 201.)
- (10) The state issuing a custody determination complying with the jurisdictional priorities retains exclusive jurisdiction to modify the custody determination unless that court determines that there is no longer any significant connection with that state or all the parties have left that state or another state would be a more convenient forum. [RCW 26.27.211](#); [RCW 26.27.221](#). (Sections 202 and 203.)
- (11) A court may assume temporary emergency jurisdiction (Section 204) if the child is present in the state and has

been abandoned or it is necessary in an emergency where the child, a sibling, or a parent is threatened with abuse. The UCCJEA explicitly recognizes domestic violence as “an emergency” which may justify the exercise of temporary jurisdiction even if the court is not in the child’s home state. And in an additional departure from the UCCJA, the UCCJEA sets forth a specific procedure for determining the length of time jurisdiction will continue. [RCW 26.27.231\(1\)](#).

- (a) If there is a prior custody order or a proceeding has been commenced in another state with jurisdiction, an order issued in this state must specify a period the court considers adequate to obtain an order from the state with jurisdiction. The temporary order remains in effect until a state having jurisdiction enters a custody determination within the specified time or until the specified time expires. [RCW 26.27.231\(3\)](#).
  - (b) If there is no prior custody determination and no proceeding is commenced in another state, the emergency order remains in effect until another state with jurisdiction enters a custody determination. If a proceeding is not commenced in another state, the emergency order may become a final custody determination if it so provides and if this state becomes the child’s home state. [RCW 26.27.231\(2\)](#).
  - (c) Upon being informed that a custody proceeding is commenced in another state or a custody determination has been made in another state, the court must immediately communicate with the other court to resolve the emergency, protect the safety of the parties and the child, and determine the duration of the temporary order. [RCW 26.27.231\(4\)](#).
- (12) The issue of inconvenient forum (Section 207) may be raised by request of another court, a party, or on the court’s own motion. [RCW 26.27.261\(11\)](#). Before determining whether it is an inconvenient forum, the court shall consider whether another state exercising jurisdiction is appropriate. The court shall allow the parties to submit information and shall consider all relevant factors, including:

- (a) Whether domestic violence has occurred and is likely to continue and which state could best protect the parties and the child;
- (b) How long the child resided outside this state;
- (c) The distance between the courts;
- (d) The parties' relative financial circumstances;
- (e) Any agreement between the parties;
- (f) The nature and location of evidence;
- (g) Each court's ability to decide expeditiously; and
- (h) Each court's familiarity with the facts and issues.

[RCW 26.27.261\(2\)\(a\)-\(h\)](#).

- (13) If a party has engaged in unjustifiable conduct (Section 208), the court shall decline to exercise its jurisdiction unless the parties have acquiesced in the exercise of jurisdiction, a court determines that this state is a more appropriate forum, or no other state would have jurisdiction. The court may fashion a remedy to ensure the child's safety and prevent repetition of the unjustifiable conduct. If the court dismisses a petition or stays a proceeding, it shall assess costs and expenses against the party seeking to invoke its jurisdiction, unless that would be clearly inappropriate. [RCW 26.27.271](#).

The comments following Section 208 of the federal model UCCJEA state:

Domestic violence victims shouldn't be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence even if the conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. Inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another state to establish jurisdiction has committed unjustifiable conduct

and the new state must decline to exercise jurisdiction under this section. (UCCJEA, 1997.)

- (14) If a party alleges under oath that a party's or a child's health, safety or liberty would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public, unless the court determines after hearing that disclosure is in the interest of justice, taking into consideration the health, safety and liberty of the party and the child. [RCW 26.27.281\(5\)](#). (Section 209.)
- (15) The court may enforce an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction. [RCW 26.27.411](#). (Section 302.) *See* Appendix G for further information.
- (16) The court must recognize and enforce a custody determination of another state if the other state's court exercised jurisdiction in substantial conformity with the UCCJEA, and may use any remedy available under the law of this state. [RCW 26.27.421](#). (Section 303.)
- (17) A court without jurisdiction to modify a custody determination may issue a temporary order enforcing a visitation schedule (or visitation provisions in a determination that does not provide specific visitation schedule, in which case the court shall specify a time period it considers adequate for the petitioner to obtain a custody determination from a court with jurisdiction). [RCW 26.27.431](#). (Section 304.)
- (18) Another state's determination may be registered, on notice and opportunity for hearing. A hearing to contest the validity of the registered determination must be requested within 20 days from service of notice. A registered determination is enforceable as if it were a determination issued by this state. (Section 305) Registration does not provide additional grounds to modify the determination. [RCW 26.27.441](#). (Section 306.)
- (19) Expedited enforcement is available, [RCW 26.27.471](#), (Sections 308, 309 and 310) on verified petition which must state:

- (a) Whether the court issuing the determination identified the jurisdictional basis on which it relied;
- (b) Whether the determination has been vacated, stayed or modified by a court whose decision must be enforced;
- (c) Whether any other proceeding has been commenced that could affect the proceeding;
- (d) Present physical address of the child and respondent, if known;
- (e) Whether relief in addition to immediate physical custody and attorney fees is sought; and
- (f) If the custody determination has been registered and confirmed, the date and place of registration.

Upon a petition being filed, the court shall issue an order directing the respondent to appear in person, with or without the child. The hearing must be held on the next judicial day after service or the first judicial day possible. The order must state the time and place of hearing and advise the respondent that at the hearing the petitioner may take immediate custody of the child unless the respondent appears and establishes that either:

- (a) The custody determination has not been registered and confirmed; and
    - (i) The issuing court did not have jurisdiction;
    - (ii) The custody determination has been vacated, stayed or modified by a court with jurisdiction;
    - (iii) The respondent was entitled to but did not receive notice in the court which issued the determination;
  - (b) Although the determination was registered and confirmed, it has been vacated, stayed, or modified.
- (20) The court may draw an adverse inference from a testifying party's refusal to answer on the ground that the testimony may be self-incriminatory. (Section 310.)
- (21) There is no spousal privilege or immunity based on the relationship of husband and wife or parent and child. (Section 310.)

- (22) An order requiring law enforcement to take physical custody of a child requires a writ of habeas corpus under [RCW Chapter 7.36](#). [RCW 26.27.501](#). (Section 311.)
- (23) The court shall award the prevailing party necessary and reasonable expenses unless the award would be clearly inappropriate. [RCW 26.27.511](#). (Section 312.)
- (24) The court must give full faith and credit to an order issued by another state enforcing a custody determination issued by another state. [RCW 26.27.521](#). (Section 313.)
- (25) Unless the court enters a temporary emergency order, the enforcing court may not stay enforcement pending appeal. [RCW 26.27.531](#). (Section 314.)
- (26) A prosecutor or attorney general may act to locate or return a child or enforce a custody determination if there is an existing custody determination, a request from a court in a pending custody proceeding, a reasonable belief that a criminal statute has been violated, or a reasonable belief that a child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction. [RCW 26.27.541](#). (Section 315.)
- (27) On the request of a prosecutor or attorney general, a law enforcement officer may take any lawful action reasonably necessary to locate and child or party and assist a prosecutor or attorney general with locating or returning a child or enforcing a custody determination. [RCW 26.27.551](#). (Section 316.)
- (28) If the prosecutor or attorney general must take action and the respondent is not the prevailing party, the court may assess all direct costs incurred by the prosecutor or attorney general and law enforcement against the respondent. [RCW 26.27.561](#). (Section 317.)
- (29) The UCCJEA repeals the UCCJA.

**2. Uniform Child Custody Jurisdiction Act (UCCJA) ([RCW 26.27](#))**

Although the UCCJEA repealed the UCCJA in Washington, effective July 1, 2001, Washington courts have read into the UCCJA similar requirements to those of the UCCJEA. Until the courts construe the UCCJEA, UCCJA decisions may still be instructive. The only reported UCCJA Washington State decision directly involving domestic violence gave great deference to the trial court's concern for protection of the adult victim and her child.

*In re Custody of Thorensen*, 46 Wn. App. 493, 501, 730 P.2d 1380 (1987) (Washington court did not err in entertaining mother's petition to modify Florida order, when father was awarded temporary custody without notice to mother, who then fled the state. Washington court found that mother had left Florida to protect herself and her child from physical and mental abuse by the father.) However, under the UCCJA, assumption of emergency jurisdiction is to be taken only under extraordinary circumstances, such as where child would be placed in imminent danger if jurisdiction not exercised. *In re Marriage of Greenlaw*, 67 Wn. App. 755, 840 P.2d 223, *rev'd on other grounds*, 123 Wn.2d 593 (1992).

**3. Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. § 1738A)**

The Parental Kidnapping Prevention Act, as a federal act, preempts state law in the event of a conflict. The UCCJEA was designed to reconcile differences between the UCCJA and PKPA, and as a result reliance on the PKPA will be less significant.

**4. Regulations involving employees of Department of Defense, members of military, and national defense**

*See* National Defense Authorization Act of 1989, Pub. L. No. 100-456, 10 U.S.C. 814, § 721. Department of Defense Directive, No. 5525.9 (12-27-88), Implementing National Defense Authorization Act, Pub. L. No. 100-456 and 10 U.S.C. 814 (Department of Defense shall cooperate with courts and state and local officials in enforcing court orders).

## 5. International child abduction

In cases of international child abduction, a particular problem arises when battered women flee with their children over international borders.<sup>19</sup> The court should recognize the available options for these situations and the limitations of those options.

*See Appendix G: The Hague Convention on International Child Abduction: A Child's Return and the Presence of Domestic Violence*, for an overview of how the Hague Convention has been applied in courts in Washington and around the country, and the complex issues courts face when an abducting parent is also a victim of domestic violence.

### a. Statutes and treaties.

- (1) International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§11601 *et seq.*; Hague Convention on the Civil Aspects of International Child Abduction (to which the U.S. is a signatory), 22 C.F.R. pt. 94, Fed. Reg. 6/23/88. These provide for the immediate return of children abducted from and to countries which have signed the Convention.
- (2) The court may want to consider allegations of domestic violence in interpreting the following exception, found in Article 13(b) of the Convention:

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that . . . there is a **grave risk** that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation . . .  
[emphasis added.]

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

- (3) The court may want to consider domestic violence as relevant to an inquiry under Articles 14-19, which discuss how a court is to determine whether the removal or retention of the child was “wrongful” under the law of the child’s habitual residence, and related issues. An analysis similar to the “unclean hands” section of the UCCJA and cases cited *supra* could be employed.
- (4) Article 20 states “the return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.”

Again, these provisions could be applied to a domestic violence case where custody is at issue.

b. Avoiding international child-snatching before it occurs

Where international child-snatching appears to be a possibility, the court may want to include provisions in custody agreements which minimize chances for this, e.g., supervised visitation and getting both parents to sign a stipulation saying the child cannot be removed from the United States without a court order. Such stipulations help prevent issuance of the child’s passport (*see* 22 C.F.R. 51.27). Some foreign countries give more weight to the father’s signature on such a stipulation than to the signature of the mother or judge.

The stipulation/order should be sent to the Office of Citizenship Appeals and Legal Assistance, State Department. If a passport already exists, the non-custodial parent can be ordered to relinquish it to the custodial parent or have it placed in escrow. Performance bonds to guarantee the child’s return from abroad can help deter abductions and provide cash for the left-behind parent to travel to the foreign country and hire counsel.<sup>20</sup>

## B. Cases

*See, e.g., In re Marriage of Hamilton*, 120 Wn. App. 147, 157-8, 84 P.3d 259 (2004) (Where a child has no home state, courts may properly consider any significant contacts with a state by a parent under the UCCJEA to determine jurisdiction.).

*Farrell v. Farrell*, 351 N.W.2d 219, 225 (Mich. 1984) (mother left abusive father in Ireland and brought children to Michigan; Michigan court held it had jurisdiction under UCCJA).

*Garza v. Harvey*, 726 S.W.2d 198, 203 (Tex. 1987) (domestic violence and child abuse; Texas bound by UCCJA to uphold Mexican decree, but granted short-term emergency relief until steps taken in Mexico to protect child).

*Sheikh v. Sheikh*, 546 N.Y.S.2d 517, 521-2 (N.Y. 1989) (emergency alleged but not found under Hague Convention).

*Cf. In re Marriage of Leronimakis*, 66 Wn. App. 83, 94, 831 P.2d 172, *review denied*, 120 Wn.2d 1006, 838 P.2d 1142 (1992) (dispute as to jurisdiction between Washington State and the country of Greece, *review denied*, 120 Wn.2d 1006, 838 P.2d 1142. There were allegations of abuse but no findings). (Note: the Hamilton Court distinguished itself from this opinion based on the change of law).

*In re Marriage of Payne*, 79 Wn. App. 43, 51, 899 P.2d 1318 (1995) (the first inquiry is whether there is a home state).

## VIII. Paternity

The requirements and standards set forth in the Parenting Act apply to paternity actions except that a full parenting plan is not required except at the request of a parent; a paternity order need merely set forth residential provisions for the child and does not need to include decision-making or alternative dispute resolution provisions. [RCW 26.26.130\(7\)](#). (In the absence of these provisions, the custodian of the child is presumed to have sole decision-making authority as to the major decisions.)

In cases where the mother is the respondent and is resistant to the petitioner being declared the father, the court should inquire whether domestic violence has taken place. If there are allegations of domestic violence, the court may wish to order that either no visitation take place or that visitation be supervised by a third party until the paternity issue is resolved.

In cases where the resistant mother receives Temporary Assistance to Needy Families (TANF, formerly AFDC) and is a statutory party to the State's paternity action, the court after inquiry may wish to refer the mother to the Department of Social and Health Services (DSHS) for an administrative determination of a good cause exception to the state's proceeding with an action to establish paternity for child support purposes.

## **IX. Temporary Assistance to Needy Families (TANF, Formerly AFDC) Good Cause Issue**

Persons applying for Temporary Assistance to Needy Families (TANF) assign rights to child support to the state unless there is good cause.

### **A. Statutes and Regulations**

Violence can be the basis for a "good cause" exception to assignment of rights to state. *See* 42 U.S.C. § 602(a)(7)(A)(iii); [WAC 388-422-0005](#), and [WAC 388-422-0010](#).

#### 1. Federal statutes: 42 U.S.C. § 602(a)(7)(A)(iii):

. . .waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

#### 2. Washington regulations: [WAC 388-14A-2045](#).

If a custodial parent (CP) fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements.

Good cause not to cooperate can be claimed under [WAC 388-422-0020](#) (a good reason not to cooperate is also called good cause. If cooperation with the division of child support would result in serious physical or emotional harm

to the child or custodial parent; a child born outside marriage was conceived as a result of incest or rape; or is the subject of pending adoption proceedings. The standard for good cause for medical assistance is broader and may consider the best interests of the person who is being asked to cooperate.

## **B. Cases**

*See, e.g., Cass Cy. Welfare Dep't v. Wittner*, 309 N.W.2d 320, 324 (Minn. 1981) (good cause denied because violence too remote in time)

*Bootes v. Pennsylvania*, 439 A.2d 883, 885 (Pa. 1982) (good cause denied because abuse was verbal only).

## **X. Relocation**

A custodial parent wanting to relocate must give prior notice of intended relocation to all persons with custodial or visitation rights under a court order. This applies to all court orders entered after June 8, 2000 and all orders entered before June 8, 2000 if the court order does not expressly govern relocation. [RCW 26.09.405](#).

### **A. The Court Has the Authority to Allow or Not Allow the Person to Relocate the Child. [RCW 26.09.420](#).**

### **B. Notice for Relocation of a Child**

1. Must be provided by personal service or mail requiring a return receipt, [RCW 26.09.440\(1\)\(a\)](#)
2. Prior notice for relocation requiring a change of school district
  - a. Must be provided 60 days before the intended relocation of the child. [RCW 26.09.440\(1\)\(b\)\(i\)](#).
  - b. If the person did not know in time to provide 60 days' notice, the notice must be provided no more than five days after the person knows the information. [RCW 26.09.440\(1\)\(a\)\(ii\)](#).
3. Prior notice of relocating to a domestic violence shelter

If the person intending to relocate is entering a domestic violence shelter or is relocating to avoid a "clear, immediate, and

unreasonable risk to the health or safety of a person or the child,” the notice may be delayed for 21 days. [RCW 26.09.460](#).

4. Contents of notice, [RCW 26.09.440\(2\)\(a\)](#)

The relocating person must provide and promptly update the content of the notice:

- a. Address for service of process during the objection period.
- b. Brief statement of reasons for relocation.
- c. This statement:  
“THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD.” [RCW26.09.440\(2\)\(a\)\(iii\)](#).
- d. Specific street address of the intended new residence.
- e. New mailing address, if different from the street address.
- f. New home telephone number.
- g. Name and address of the child’s new school and, if applicable, day care facility.
- h. Date of intended relocation.
- i. Proposed parenting plan for a revised schedule, if any.
- j. If the person intending to relocate participates in the address confidentiality program or has a court order permitting withholding some or all of the information, the information is not required to be given with the notice. [RCW 26.09.460\(2\)](#).
- k. A person intending to relocate who believes his or her or the child’s health or safety would be unreasonably put at risk by notice or disclosure of certain information may request an ex parte hearing to have all or part of the notice requirements waived. The court may provide relief necessary to facilitate the legitimate needs of the parties and the best interests of the child, including ordering that

notice requirements be abridged or waived. [RCW 26.09.460\(4\)](#).

5. Relocation within the same school district, [RCW 26.09.450](#)
  - a. The person intending to relocate may provide actual notice by any reasonable means.
  - b. The other party may not object but retains the right to move for modification.
6. Temporary orders, [RCW 26.09.510](#)
  - a. The court may restrain relocation or order the child's return if it finds:
    - i. the required notice was not provided timely and the other party was prejudiced;
    - ii. the relocation occurred without agreement, court order, or the required notice; or
    - iii. after hearing with adequate notice, it is likely that on final hearing the court will not approve the relocation or the circumstances do not warrant relocation before the final determination at trial.
  - b. The court may allow the relocation pending final hearing if it finds:
    - i. timely notice was provided or the circumstances otherwise warrant a temporary order; and
    - ii. after hearing with adequate notice, it is likely that on final hearing the court will approve the intended relocation.
7. Basis for the court's determination, [RCW 26.09.520](#)
  - a. The person proposing relocation must give reasons.
  - b. There is a rebuttable presumption that the relocation will be permitted.

A person entitled to object may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors, which

are not weighted:

- i. The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
- ii. Prior agreements of the parties;
- iii. Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- iv. Whether either parent or a person entitled to residential time with the child is subject to limitations under [RCW 26.09.191](#);
- v. The reasons of each person seeking or opposing relocation and the good faith of each;
- vi. The age, developmental stage, and needs of the child and the likely impact of relocation or its prevention on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- vii. The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- viii. The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- ix. The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- x. The financial impact and logistics of the relocation or its prevention; and
- xi. For a temporary order, the amount of time before a final decision can be made at trial.
- xii. The court **may not** admit evidence on whether the person seeking to relocate will forego relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. [RCW 26.09.530](#).

**NOTE:** Courts are required to consider all of the child relocation factors. *In re Marriage of Horner*, 151 Wn.2d 884, 894, 896, 93 P.3d 24 (2004).

*In re Parentage of R.F.R.*, 122 Wn. App. 324, 330-1, 93 P.3d 951 (2004) (Though no parenting plan as in place, the trial court did not abuse its discretion in determining that the mother was the parent entitled to a statutory presumption in favor of relocation under [RCW 26.09.520\(b\)](#), because the child received the majority of its care from her. This presumption did not violate the father's due process right, or fundamental right to parent.).

c. Objections by non-parents, [RCW 26.09.540](#)

The court may not restrict relocation when the sole objection is from a third party, unless the third party:

- i. Is entitled to residential time or visitation under a court order; and
- ii. Has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

d. Sanctions, [RCW 26.09.550](#)

The court may sanction a party if it finds the party's proposal to relocate or objection to relocation was made to harass a person, interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation, or to unnecessarily delay or increase the cost of litigation.

e. Priority for hearing, [RCW 26.09.560](#)

A hearing involving relocation shall be accorded priority.

# **ATTACHMENT 1**

## **SECOND SUBSTITUTE SENATE BILL (2SSB)5470**

### **Chapter 496, Laws of 2007 State of Washington 60th Legislature 2007 Regular Session DISSOLUTION PROCEEDINGS Effective Date: 07/22/07**

#### **Selected Sections<sup>21</sup>**

By Senate Committee on Ways Means (originally sponsored by Senators Hargrove, Stevens, McAuliffe, Brown and Regala)

AN ACT Relating to dissolution proceedings; amending RCW 26.09.002, 2.56.180, 26.09.020, 36.18.016, 26.09.191, 26.12.177, 26.09.015, 26.09.184, 26.09.015, 26.09.187, and 26.09.197; reenacting and amending RCW 2.56.030; adding new sections to chapter 26.09 RCW; adding a new section to chapter 26.12 RCW; adding a new section to chapter 2.53 RCW; 6 adding a new section to chapter 26.18 RCW; creating new sections; providing effective dates; and providing an expiration date.

#### **PART I - Intent**

**Sec. 101.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read as follows:

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

**NEW SECTION. Sec. 102.** A new section is added to chapter 26.09 12 RCW to read as follows:

The legislature reaffirms the intent of the current law as expressed in RCW 26.09.002. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the

identification of domestic violence as defined in RCW 26.50.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

...

### **PART III - Domestic Violence and Child Abuse**

**NEW SECTION. Sec. 301.** A new section is added to chapter 26.09 36 RCW to read as follows:

Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) incases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings.

...

**Sec. 303.** RCW 26.09.191 and 2004 c 38 s 12 are each amended to read as follows:

(1) The permanent parenting plan shall not require mutual decision making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period 1 of time or substantial refusal to perform parenting functions; (b) 15 physical, sexual, or a pattern of emotional abuse of a child; or (c) a 16 history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 25 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection. This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent

from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent

requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the

presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests,

adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of

the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

~~(5)~~(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

~~(6)~~(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

**NEW SECTION. Sec. 304.** A new section is added to chapter 26.09 RCW to read as follows:

Before entering a permanent parenting plan, the court shall determine the existence of any information and proceedings relevant to the placement of the child that are available in the judicial information system and databases.

#### **PART IV - Additional Services**

**NEW SECTION. Sec. 401.** A new section is added to chapter 26.09 RCW to read as follows:

In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardian ad litem, the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;

(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time.

---

<sup>1</sup> Peter G. Jaffe, Claire V. Crooks and Samantha E. Poisson, *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, 54(4) JUV. & FAM. CT. J. (National Council of Juvenile and Family Court Judges, Fall 2003) [hereinafter NCJFCJ].

<sup>2</sup> L. Bancroft and J. Silverman, *The Batterer as Parent* (Thousand Oaks, CA: Sage Publications, 2002).

<sup>3</sup> Diane Lye, *Washington State Parenting Act Study* (Washington State Gender and Justice Commission, June 1999) (copy available through the Administrative Office of the Courts, 360-753-3365, or at <http://www.courts.wa.gov/committee/pdf/parentingplanstudy.pdf>); Wechsler and Appelwick, "Parenting Plans" (Chapter 47), in *Washington Family Law Deskbook*, 2nd ed. (Washington State Bar Association, 2000 & Supp. 2006).

<sup>4</sup> Family Violence, Child Abuse and Neglect, and Domestic Relations resource materials, NCJFCJ, Website: [Resources](http://www.ncjfcj.org), Resource Request Line: 1-800-527-3223, Email: [staff@ncjfcj.org](mailto:staff@ncjfcj.org).

<sup>5</sup> M. Kernic, D. Monary-Ernsdorf, J. Koepsell, and V. Holt (University of Washington), "Children in the Crossfire," *Violence Against Women* 11, no. 8 (Sage Publications, August, 2005): 991-1021.

<sup>6</sup> J. Edleson, L. Mbilinyi and S. Shetty, *Parenting in the Context of Domestic Violence* (San Francisco: Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts, 2003), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/fullReport.pdf>.

<sup>7</sup> Clare Dalton, LLM, Leslie Drozd, Ph.D. and Judge Frances Wong, *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Reno, NV: NCJFCJ, 2004, revised 2006). A free copy of this resource and others is available by calling 1-800-527-3223.

<sup>8</sup> Physical, sexual, or a pattern of emotional abuse of a child may trigger mandatory limitations on parental contact which are especially detailed and onerous in the case of sexual abuse. [RCW 26.09.191](http://leg.wa.gov/rcw/default.aspx?cite=26.09.191).

<sup>9</sup> Diane Lye, *supra* note 3, at 4-21.

<sup>10</sup> NCJFCJ, *Model Code on Domestic and Family Violence* (1994).

<sup>11</sup> J. Kunce Field, *Visits in Cases Marked by Violence: Judicial Actions that Can Help Keep Children and Victims Safe*, 35(3) CT. REV.: J. AM. JUDGES ASS'N (Fall 1998), available online at <http://www.omsys.com/fivers/visits.htm>.

<sup>12</sup> M. Sharon Maxwell, LCSW, Ph.D. and Karen Oehme, J.D., *Strategies to Improve Visitation Services in Domestic Violence Cases* (Violence Against Women Online Resources, 2001), report at <http://www.mincava.umn.edu/documents/commissioned/strategies/strategies.html>.

<sup>13</sup> See Safe Havens Program information at [www.ci.kent.wa.us/humanservices/safehavens.asp](http://www.ci.kent.wa.us/humanservices/safehavens.asp).

<sup>14</sup> D. Finkelhor, H. Hammer and A. Sedlak, "Children Abducted by Family Members: National Estimate and Characteristics," *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART)* (U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), October 2002), NCJ 196466 [reported in *The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors* (National Clearing House for the Defense of Battered Women, Violence Against Women Online Resources, August 2005), available at [www.vaw.umn.edu/documents/pkreport/pkreport.html](http://www.vaw.umn.edu/documents/pkreport/pkreport.html)].

<sup>15</sup> *Ibid.*

<sup>16</sup> J. E. Edelson and S. Shetty, "Adult Domestic Violence in Cases of International Parental Child Abduction," *Violence Against Women* 11, no. 1 (Sage Publications, January 2005). See also, J. E. Edelson, "Parental Kidnapping, Domestic Violence and the Child," in the [Interstate and International Custody program materials \(49th Washington Judicial Conference, 2006\)](http://www.ncjfcj.org/interstate-international-custody-program-materials).

<sup>17</sup> NCJFCJ, *supra* note 1, at 27.

<sup>18</sup> See H. Donigan, "Custody Proceedings: Jurisdiction and Full Faith and Credit," galley copy of a new chapter in the *Family Law Deskbook Supplement* (2006) in the [Interstate and International Custody program materials \(49th Washington Judicial Conference, 2006\)](http://www.ncjfcj.org/interstate-international-custody-program-materials).

<sup>19</sup> Edelson, *supra* note 16.

<sup>20</sup> See *International Child Abduction*, at [http://travel.state.gov/family/abduction/abduction\\_580.html](http://travel.state.gov/family/abduction/abduction_580.html).

<sup>21</sup> For the full text of 2SSB5470, see Washington State Legislature bill information at

---

<http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Session%20Law%202007/5470-S2.SL.pdf>